

Decision No. 14869

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ERVIN C. and CLARENCE E. GEORGESON,
doing business under the name of
San Pasqual Valley Truck Line,

Complainants,

-vs-

CARL A. JENSEN,

Defendant.

ORIGINAL

Case No. 1986

C. K. Fitzgerald., for complainants,

L. N. Turrentine, for defendant.

BY THE COMMISSION:

O P I N I O N

In this proceeding complainants allege that defendant is now and for months past has been transporting property between San Pasqual Valley and San Diego without valid authority in violation of the Auto Stage and Truck Transportation Act (Stats. of 1917, Chap. 213, as amended), and that the property so transported was of such a character and the transportation was carried on under such conditions that complainants were deprived of the privilege of transporting the same, to their injury as common carriers under certificate obtained from this Commission. Complainants allege that the defendant has been transporting property between said termini in both directions daily, on schedule and over a regular route. They pray for an order requiring the defendant to cease such operations.

Defendant answered the complaint with the averment that he is engaged only in the movement of products or implements of farm

husbandry and other farm merchandise from farm to farm or from and to farm to and from loading point and that as to such carriage he is not required to obtain a certificate of public convenience and necessity by reason of the amendment to Sec. 5 of the Auto Stage and Truck Transportation Act of 1917 (Chapter 310, Statutes of 1923). He asks the dismissal of the complaint.

A public hearing herein was conducted by Examiner Williams at San Diego, at which the testimony produced by complainants in our opinion clearly sustained the allegation that defendant daily picked up milk at a platform on the highway which milk had been delivered to the platform by a producer, one Trussell, who combined the milk of other producers with his own and transported the same a distance of nine miles to the platform. It was also shown that defendant hauled feed from San Diego, to the yard of one Ashby near which place the platform is located and that this feed was transported by Trussell from the yard to San Pasqual district approximately nine miles from the yard. There was also testimony that defendant had picked up milk of the Cloverdale Dairy, one mile from the point of production, it being delivered at the roadside by the producer. In all other respects the testimony showed that the defendant was performing a service in picking up milk from the point of production--the farm-- and transporting the same to San Diego and that on return calls he had transported dairy feed and other animal food, and also ice required for pre-cooling milk, delivering the same at farms except in the instances noted above. There was also testimony by John Musardi, a driver of one of complainant's trucks, that he had observed defendant transporting eggs and laundry between San Diego and Poway.

It was stipulated by the parties that complainants possess a certificate from the Railroad Commission authorizing their regulated transportation service between San Pasqual and San Diego and that defendant possesses no certificate of public convenience and necessity to operate a transportation service of any character.

It appears from the testimony that defendant organized a daily transportation service for producers of milk, and that in every instance, except those noted above, the milk to be transported to San Diego has been delivered to defendant at the farms, usually on a platform at the roadside. It also appears that this service was formerly given by complainants and that some of the same platforms were used. There was little dispute as to the facts incident to the hauling, and the parties joined in seeking from the Commission a determination of the rights of each under the Auto Stage and Truck Transportation Act.

On April 27th the Supreme Court, in Franchise Motor Freight Association vs. Railroad Commission, held unconstitutional the proviso in section 5 of the Auto Stage and Truck Transportation Act by which the transportation of farm products is exempted from the provisions of the act. The Court there said:

"* * * What reasonable ground of distinction is there between a common carrier engaged in the business of hauling various kinds of freight, including products and implements of husbandry, by motor truck over a regular route upon the public highway and another common carrier engaged in the business of hauling freight which consists solely of the products and implements of husbandry by motor truck over the same route, which justifies the subjection of the one to the regulations imposed by the Auto Stage and Truck Transportation Act, and the exemption of the other from the burden of those regulations? The only basis for such a distinction which has been suggested to us is that a continuance of the development of the state demands that the cultivation and marketing of farm products be encouraged and assisted and that the intent of the legislature in making this provision was the encouragement of the farmers to larger production and the assurance of accessibility of markets

for that production, to the end that the products of the soil might be placed within the ready reach of all and their production fostered and assisted. This suggestion, as it seems to us, overlooks the main purpose of the regulation of rates and charges provided for in the constitution, and of the regulation of service, competition, safety provisions, issuance of securities, etc. provided for in the act here in question. It seems plain to us that the primary purpose of such regulation is to insure the adequacy, regulatory and reliability of service and the reasonableness of rates and charges therefor. Such regulation is for the benefit of the producing and consuming public. It follows that the exemption from regulation of those transportation companies engaged in hauling farm products and implements would be a detriment, rather than a benefit, to the farmers, as well as to the public generally, and would be of benefit solely to the particular class of transportation companies so exempted.

"* * * we are impelled to conclude that no natural, intrinsic or constitutional distinction is to be found as a basis for the exemption of the transportation companies described in the 1923 amendment, supra, from the regulations prescribed in the Auto Stage and Truck Transportation Act, and that such attempted exemption is violative of the Fourteenth Amendment to the federal constitution and of like provisions in our state constitution."

This decision necessarily nullifies the exemption contained in section 5 of the act. The transportation of products or implements of husbandry and other farm necessities are therefore amenable to all the provisions of the act to the same extent as the transportation of any other property.

O R D E R

A public hearing having been held in the above-entitled proceeding, evidence having been received from both parties, and the matter having been duly submitted, the Commission hereby finds as a fact:

That the defendant, Carl A. Jensen, has been, and now is engaged in the transportation of property over the public highways, for compensation, between fixed termini and over regular routes without having obtained from this Commission a certificate declaring that public convenience and necessity require such transportation;

And basing its conclusions upon the findings of fact and statements of the within opinion, the Commission hereby concludes that the said operations of Carl A. Jensen should be discontinued pending the receiving of such a certificate as provided by Chapter 213, Statutes of 1917, as amended; and to that end

IT IS HEREBY ORDERED that the said defendant, Carl A. Jensen, be, and he is hereby directed to cease and hereafter desist from any and all such transportation unless and until he shall have secured from this Commission a certificate that the public convenience and necessity require the resumption or continuance thereof; and

IT IS HEREBY FURTHER ORDERED that the Secretary of this Commission be, and he is hereby directed to serve, or cause personally to be served upon said defendant, Carl A. Jensen, a certified copy of this decision; and

IT IS HEREBY FURTHER ORDERED that the Secretary of this Commission be, and he is hereby directed to forward a certified copy of this decision to the District Attorney of San Diego County.

Dated at San Francisco, California, this 30th day of April, 1925.

H. B. Lundberg

C. Seaver

Egerton Shaw

Ernest Wood
Commissioners.